No. 15,644

IN THE

United States Court of Appeals

For the Ninth Circuit

MARION S. FELTER, on behalf of himself and others similarly situated,

Appellant,

vs.

SOUTHERN PACIFIC COMPANY, a corporation; BROTHERHOOD OF RAILROAD TRAINMEN, a voluntary association; J. J. CORCORAN, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; J. E. TEAGUE, as Secretary, General Committee, Brotherhood of Railroad Trainmen,

Appellees.

APPELLANT'S REPLY BRIEF.

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APPELLANT'S REPLY BRIEF.

HE ULTIMATE ISSUE IS WHETHER THERE IS ANY AUTHORITY FOR THE CONTINUED DEDUCTION OF APPELLANT'S WAGES.

The appellees state that the *sole* issue is whether he Dues Deduction Agreement places an unreasonble burden upon the exercise of an employee's right o change unions. The applicable law and the facts f this case do not support this assertion, which misescribes the issue here.

The true issues that are involved are:

(1) Section 2, Eleventh (c) prohibits agreements providing for deduction and payment of dues to a labor organization other than that in which an employee holds membership. It is undisputed that appellant *has* withdrawn his membership in the Brotherhood of Railroad Trainmen (hereinafter called BRT). Therefore, the legality of appellees' conduct in continuing to deduct and receive a portion of appellant's wages must be determined.

(2) Section 2, Eleventh (b) of the Railway Labor Act provides that an employee may revoke his wage assignment authorization a year after its execution. It is undisputed that appellant did submit a written revocation more than a year subsequent to signing his authorization. Hence, the legality of the continued deduction and receipt of appellant's wages must be determined.

With respect to the issue designated as (1) above, the answer of the BRT admits that appellant, on and after March 1, 1957,[1] was no longer a member of that labor organization (R. 7, 36). After having so admitted, the BRT places its refusal to honor appellant's revocation *solely* on the basis that the revocation "was not handled through the designated secretary and treasurer" of the BRT (R. 36). There thus can be no question that the BRT in this case is in-

[1]The reference in the record at page 7 thereof to March 1, 1956, is obviously a typographical error, and should read March 1, 1957.

isting upon, as a matter of law, the right to receive ues and other payments from an employee whom it dmits is not a member of the BRT. This insistence nd the actual receipt of such monies is a direct viola- ion of Section 2, Eleventh (c) of the Act.

In this state of facts it matters not that appellee outhern Pacific Company may not have had actual roof of appellant's withdrawal from the BRT at the me it deducted dues from his wages and paid them ver to the BRT. Both appellees rely upon an inter- retation of the Dues Deduction Agreement which ney maintain permits their conduct despite the ad- nitted fact by the BRT that appellant was no longer s member. It is for this reason, among others, that ppellant asserts that the Dues Deduction Agreement s invalid under the Act. The Act specifically provides nat no such agreement may provide for deduction f dues and the like "*payable* to an organization other nan that in which (an employee) holds membership." et appellees have so applied their Dues Deduction greement, contrary to the express provisions of the ct. It is, therefore, an unlawful agreement and either appellee may escape this result by the argu- ent that the Company had no proof that appellant as not a member of the BRT.

Manifestly, Congress did not intend that an em- loyer could continue to deduct dues from an em- loyee's wages and that a labor organization could ontinue to receive those dues for so long as the labor rganization, with full knowledge of the fact, failed o advise the employer that the employee was not a

member of that union. And any agreement between the employer and the union which permits such a result, as it did here, is plainly in contravention of the Act.

Nor is this case controlled by *Pennsylvania R. R. Co. v. Rychlik,* 352 U.S. 480, cited by appellees, and that case is not in point to any issues in this case. The *Rychlik* case, supra, concerned the legality of a discharge under a union shop agreement. The Court merely held that in the exercise of the right to change unions, the union selected must be a labor organization which is "national in scope" in order to qualify under the Act; the term "national in scope" was interpreted to include only those unions qualified to elect representatives to the National Railroad Adjustment Board.

Whether or not appellant and others similarly situated had desired to change unions has no bearing on their rights under the Act as individual employees to revoke their dues deduction authorizations. These rights are as fully applicable to employees who choose to remain members of the union as they are to those who may decide to make a change. Such union members may pay dues directly to the union or decide to authorize deduction of dues from wages. The Act gives that choice only to the individual employee, and whichever choice is made only he may change it, and he may do it in the manner prescribed by the Act without interference from the union or the carrier. The holding in the *Rychlik* case, supra, is thus entirely beside the issue in the instant matter.

The critical issue here is whether the appellant, in evoking his dues deduction authorization, is entitled the protection afforded by the provisions of the ct; and, if so, whether any legal justification may e found for the refusal of the appellees to give effect that revocation.

In their briefs the appellees purport to find this ıstification in two provisions of the Dues Deduction greement:

(1) That revocations must be transmitted to the ompany only through the BRT.

(2) That revocations must be on cards reproduced ıd furnished by the BRT.

Neither of these purposed "requirements" provides ıy semblance of justification for not terminating the age deductions in accordance with appellant's revo-tion, and as required by Section 2, Eleventh (b) the Act.

IE REFUSAL TO HONOR APPELLANT'S REVOCATION CANNOT BE JUSTIFIED ON THE GROUNDS THAT THE DUES DEDUCTION AGREEMENT REQUIRES REVOCATIONS TO BE SUBMITTED TO THE COMPANY THROUGH THE BRT.

The Company, in its brief, devotes considerable ace to arguing the desirability from its standpoint having the BRT take the responsibility for proc-sing all revocations (Company's Brief, pp. 7-8). he short answer to this contention might well be at the Company cannot so abdicate its responsibility to deprive individual employees of their rights nder the Act.

But more importantly, the record herein precludes any reliance on any such requirement. The fact is that the BRT had in its possession not one, but two revocation cards executed by the appellant. One of these cards was submitted directly to the BRT (R. 23-24, 67). The other card, sent by the appellant to the Company, was forwarded by the Company to the BRT for inclusion on the list "of employees from whose wages no further deductions (were) to be made" (R. 28-29, 67).

It is, therefore, apparent that this Dues Deduction Agreement provision, even if valid, provides no justification for the failure to give effect to appellant's revocation.

The BRT in its brief argues that it is not a burden for "a member to ask his union" for the revocation card. The very point involved is that appellant was *not* a member of the BRT and it was not "his union." The fact of this severance of membership relations goes to the heart of the realities of industrial relations life involved in this case. Appellant was a non member of the union and it became the interest of the BRT to place obstacles in his path, and the requirement that appellant submit himself to the grace of the BRT to get a release of his own money is *per se* coercive under the circumstances. Moreover, it is not true that the BRT "immediately" gave him that release "without comment" (BRT Brief, p. 11). The fact is that although it had in its possession appellant's revocation card in proper form, the BRT refused to send it to the Company, and instead appel-

ant was advised he would have to wait at least another month to be released of his wage assignment and then only if he made out and submitted to the BRT another identical card, differing only in that it was printed by the BRT. While appellant was thus forced to cool his heels at the whim of the BRT, he was told that the BRT "hoped" that he would "reconsider" (R. 25).

This was, indeed, the kind of "interference" which, if present, the BRT concedes would give grounds for maintaining appellant's rights under the law had been obstructed (BRT Brief, p. 12). Not many employees under such conditions would persevere in this battle of wits with a powerful union, and under normal conditions the BRT would succeed in such tactics. It is to prevent such practices against any employee who seeks to assert his individual rights under the law, that appellant has brought this action.

THE REFUSAL TO HONOR APPELLANT'S REVOCATION CANNOT BE JUSTIFIED ON THE GROUNDS THAT REVOCATIONS CAN BE MADE ONLY ON CARDS "REPRODUCED AND FURNISHED" BY THE BRT.

Appellees in their briefs make continual reference to the necessity of establishing some "orderly procedure" as to the manner in which revocations must be made. This is said to be necessary in order to facilitate the requisite bookkeeping entries and changes in personnel records. It is noteworthy that Congress did not deem it necessary to prescribe any intricate revocation process. But even assuming

appellees' point is well taken, under the facts herein, no justification for the refusal to honor appellant's revocation may be found.

As found by the Court below, the revocation cards submitted were identical in form to those assertedly required by the Dues Deduction Agreement (R. 67). No contention is made that the precise information and data required to effect any changes in personnel records were not fully supplied. Nor is there any dispute as to the timeliness of the revocations.

The sole basis for the refusal is the fact that the revocation cards were not "reproduced and furnished" by the BRT. But the fact that the revocation cards were not printed at the expense of the BRT is totally unrelated to any administrative paper work required. Equally irrelevant to any necessary record keeping is whether the blank revocation card forms in the first instance are obtained from the BRT.

Thus, while appellees disclaim any intent to frustrate the employees' desire to discontinue the dues deduction, one may logically ask what then is the purpose of the requirement that only a revocation card granted at the grace of the BRT will be accepted?

Appellees contend for the "right" of the BRT to be "assured" that a revocation is "the result of a considered decision of the employee" (Company's Brief, pp. 8-9; BRT Brief, p. 11). The Act plainly does not contemplate that a union, with a real financial interest in the matter, shall sit in judgment as to whether the

vocation represents such a "considered decision." ngress did not intend that only such revocations e to be effective which, to the satisfaction of the ion, are deemed executed with sufficient solemnity.

The BRT in its brief assumes unto itself the right determine that the employee has not been the ictim of a raid" or has not been "high pressured" "unduly influenced" (BRT Brief, p. 11). Presumly this means that if the BRT, a highly interested verse party, decides that the employee has been nduly influenced," it will refuse to act upon the vocation even though, admittedly, the employee inlved is not a member of the BRT, and the revocan is in proper form. Thus, the control sought to exercised here over the individual employee is real d it is serious. This intent to exercise a veto power er the individual employee is affirmed in strong ms by the appellees themselves in arguing to this urt that they be permitted to continue to enforce eir Dues Deduction Agreement in this manner. ainly, this is not what Congress had in mind when e provisions of the law here involved were adopted ter it had been reiterated in the congressional detes that it was "*wholly and entirely* within the distion of the employee" as to whether his union dues re to be deducted from his wages by an employer d paid over to a labor union (Appellant's Opening ief, Appendix p. vi). By the Act, individual emyees were carefully protected from this kind of ion control over their free right to revoke dues duction authorizations.

Equally unconvincing is appellees' argument that the requirement that revocation cards be secured from the BRT is necessary in order to preclude forgeries. Such reasoning, if followed, would enable unions to require that revocations be accompanied by verifying affidavits or to otherwise further stultify the intent of the law. No reason suggests itself why the Union rather than the Company is in a better position to detect forgery of an employee's signature. Congress thought it adequate that revocations be made in writing and did not intend that this right be nullified by the imposition of additional onerous or frustrating restrictions imposed by labor organizations or by private agreements between employers and unions, as in this case.

In view of the otherwise complete irrationality of requiring that revocation cards be "furnished" only by the BRT, the conclusion is irresistible that its purpose and effect can only be to enable the BRT to delay or frustrate revocations until such time as it is able to exert sufficient pressure on the employees, or confront them with so many obstacles that they will abandon their efforts.

APPELLANT IS NOT "BOUND" BY THE REVOCATION PROVISION OF THE DUES DEDUCTION AGREEMENT.

The Company argues that the appellant is bound by the terms of whatever agreement the BRT, as collective bargaining representative, has entered into with the Company (Company's Brief, p. 11). In so

ing the Company ignores the very purpose which ongress evidenced in surrounding the check-off sys- m with safeguards. The whole purpose in inserting e requirements of individual authorizations, and nferring the right of individual revocation, was to move the check-off system from the exclusive con- ol of carriers and labor organizations. In the words Senator Hill, at the end of a year if an employee loes not like the way it works" he can put an end his dues deduction (see Appellant's Opening Brief, ppendix, pp. vi, vii). That is all that appellant eks here, and he has not been accorded that statu- ry right.

Obviously the BRT, as collective bargaining repre- ntative, could not enter into an agreement with the ompany purporting to make wage assignment au- orizations *irrevocable* and thereby bind the em- oyees. It is equally clear that employees are not und by provisions in agreements which serve no rpose other than to place obstacles in the path of eely exercising their right of revocation.

Appellees further argue that appellant by initially bmitting his Wage Assignment Authorization "rati- d and accepted" the terms of the Dues Deduction greement pertaining to revocation (Company's rief, p. 11). This argument overlooks the express nguage of the Wage Assignment Authorization, nich provides:

> "This authorization may be revoked by the undersigned in writing, after the expiration of one (1) year, or after the termination date of the afore-

> said deduction agreement, or upon the termination of the rules and working conditions agreement, whichever occurs sooner." (R. 78-79.)

Beyond the authorization which appellant signed there is nothing in this record to show that appellant ever saw the Dues Deduction Agreement or knew of its terms.

It is thus clear that no limitation was placed on the revocability of these authorizations or consented to by appellant, save those contained in the Railway Labor Act itself. No reference is made in the Wage Assignment Authorization which appellant signed to any requirement that revocation could be made only on cards which had been printed by the BRT, and which had been secured from that organization. Appellant, therefore, bound himself by his written consent only to what the Act specifies, and nothing more.

It is specious to argue that in executing these authorizations appellant thereby bound himself to revocation procedure assertedly required by the Dues Deduction Agreement. This is particularly true in view of the peculiar wording of that portion of the agreement relied upon by the appellees, Section 1(c). Section 1(c) is couched entirely in terms of determining responsibility as between the BRT and the Company (R. 75). On the other hand, that portion of the agreement dealing directly with revocation is Section 1(b) (R. 74-75). This section, as with the Wage Assignment Authorization, merely restates the express requirements of the Act with respect to the

apsed period prior to revocation and that the revo-
ation shall be in writing. The only additional re-
uirement of this section of the Agreement is that
evocations be in the form of Attachment "B" cards,
nd there is no dispute as to the fact that appellant's
evocation was made in this form, even assuming the
alidity under the Act of such a requirement.

CONCLUSION.

Despite all of their protestations as to the "reason-
bleness" of their Dues Deduction Agreement, the
act remains that appellees have continued to deduct
nd receive portions of appellant's wages solely be-
ause of the fact that his revocation card was not first
ecured from the BRT, and despite the fact that
ppellant was not a member of the BRT, of which
act appellee BRT had direct knowledge.

A requirement such as this that an employee must
un the gamut of obstacles placed in his way by the
ery organization from which he has severed connec-
ions, is inherently repugnant to accepted ideas of
reedom of choice. If such a capricious rule as this
s permitted under the law, then no end of clever
levices can be hereafter constructed to hamstring an
mployee, once he has committed himself to having
is dues deducted from his pay. Congress foresaw
his problem when it unequivocally and uncondition-
lly granted the full right of revocation to the in-
ividual employee. This right may not be tampered
vith under color of any excuse, either by carriers or

labor organizations who are subject to provisions of the Railway Labor Act.

We submit that the action of appellees in refusing to honor appellant's written dues deduction revocation is violative of the express language and purpose of the Railway Labor Act, and is in denial of appellant's rights thereunder.

Dated, San Francisco, California,
April 14, 1958.

Respectfully submitted,
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